

# THE INVESTIGATORY POWERS BILL 2016

## PRELUDE TO THE INVESTIGATORY POWERS BILL

A draft Communications Data Bill was introduced to Parliament in May 2012: <http://www.parliament.uk/documents/joint-committees/communications-data/CM208359DraftCDBill.pdf>. It was not intended to replace the existing RIPA 2000 regime, but would have given the Home Secretary sweeping powers to order the retention of any kind of communications data by any communications service provider.

The Bill had its origins in the Intercept Modernisation Programme of the previous Labour Government, as explained by the Open Rights Group: [https://wiki.openrightsgroup.org/wiki/Communications\\_Data\\_Bill#Content\\_of\\_the\\_Draft\\_Bill](https://wiki.openrightsgroup.org/wiki/Communications_Data_Bill#Content_of_the_Draft_Bill)

The draft Bill foundered after a highly critical report from a parliamentary committee in December 2012 <http://www.parliament.uk/business/committees/committees-a-z/joint-select/draft-communications-bill/news/full-publication-of-report/>.

The Liberal Democrat component of the then Coalition Government distanced itself from the proposed Bill, and it was taken no further (save that limited powers relating to IP resolution were subsequently legislated for in 2014 and early 2015).

## REVIEWS PRIOR TO THE DRAFT INVESTIGATORY POWERS BILL 2013-2015

Three substantial reports, commissioned in 2013 and 2014, prepared independently of Government and released in the spring and summer of 2015, formed the basis of the draft Investigatory Powers Bill.

They were:

- ***“Privacy and Security: a modern and transparent legal framework”*** (March 2015), the product of a review by Parliament’s Intelligence and Security Committee announced in 2013: <http://isc.independent.gov.uk/committee-reports/special-reports>.
- ***“A Question of Trust”*** (June 2015), the product of a review, commissioned pursuant to DRIPA 2014 s7 in July 2014 and conducted by me with the help of a small part-time team: <https://terrorismlegislationreviewer.independent.gov.uk/a-question-of-trust-report-of-the-investigatory-powers-review/>.
- ***“A Democratic Licence to Operate”*** (July 2015), the product of a review commissioned by the Deputy Prime Minister in early 2014 and conducted by a diverse panel under the auspices of the Royal United Services Institute: <https://rusi.org/publication/whitehall-reports/democratic-licence-operate-report-independent-surveillance-review>.

## DRAFT INVESTIGATORY POWERS BILL 2015

A **draft Bill** of 202 sections and 8 Schedules, in which the influence of all three reports (especially the latter two) can be detected, was prepared over the summer and autumn, and issued for pre-legislative scrutiny on 4 November 2015 with explanatory notes:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/473770/Draft\\_Inv estigatory\\_Powers\\_Bill.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/473770/Draft_Inv estigatory_Powers_Bill.pdf).

The draft Bill was far more extensive in its scope than the draft Communications Data Bill of 2012: amounting to an entirely new structure for the powers and safeguards associated with the interception of communications and the retention and accessing of communications data (together with associated activities, notably computer network exploitation or “equipment interference”) by intelligence agencies, police and others.

The draft Bill consolidated powers that are currently scattered over some 65 Acts of Parliament, but did not cover other types of surveillance (e.g. CHIS, placing of bugs) and did not replace the statutes governing the security and intelligence agencies.

The “overarching documents” accompanying the Bill included fact sheets, impact assessments, an operational case (for Internet Connection Records), handling arrangements and legal memoranda: <https://www.gov.uk/government/publications/draft-investigatory-powers-bill-overarching-documents>.

## PRE-LEGISLATIVE SCRUTINY 2015-2016

Three parliamentary committees (with a collective membership of 25 MPs and 9 members of the House of Lords) conducted pre-legislative scrutiny over the winter and published reports on the draft Bill in February 2016, as follows:

- **Science and Technology Committee:** “Investigatory Powers Bill: technology issues”, 1 February 2016 (48 pieces of written evidence, 12 oral witnesses, 33 pages + annexes): <http://www.publications.parliament.uk/pa/cm201516/cmselect/cmsctech/573/57302.htm>
- **Intelligence and Security Committee:** “Report on the draft Investigatory Powers Bill”, 9 February 2016 (4 oral witnesses, 12 pages + Annex): <http://isc.independent.gov.uk/committee-reports/special-reports>
- **Joint Committee on the Draft Investigatory Powers Bill:** “Report – Draft Investigatory Powers Bill, 11 February 2016 (148 pieces of written evidence, 56 oral witnesses, 169 pages + annexes): <http://www.parliament.uk/draft-investigatory-powers>

## THE INVESTIGATORY POWERS BILL 2016

The Bill itself contains 233 sections and 10 Schedules:

[http://www.publications.parliament.uk/pa/bills/cbill/2015-2016/0143/cbill\\_2015-20160143\\_en\\_1.htm](http://www.publications.parliament.uk/pa/bills/cbill/2015-2016/0143/cbill_2015-20160143_en_1.htm).

They occupy 245 pages of the printed version:

<http://www.publications.parliament.uk/pa/bills/cbill/2015-2016/0143/16143.pdf>.

The Bill was introduced to the House of Commons on 1 March 2016 together with a huge range of accompanying documents <https://www.gov.uk/government/publications/investigatory-powers-bill-overarching-documents> including:

- A response to pre-legislative scrutiny (102 pages), in which the Government claimed to have accepted “*the vast majority of the Committees’ recommendations*” and reflected them in the revised Bill
- An operational case for bulk powers (47 pages)
- A revised operational case for the retention of bulk internet connection records (31 pages)
- A comparison of internet connection records with the Danish equivalent (8 pages)

Six **codes of practice**, each between 19 and 118 pages in length, were also published at the same time, dealing with national security notices, interception of communications, retention and use of bulk personal datasets, equipment interference, communications data and bulk acquisition: <https://www.gov.uk/government/publications/investigatory-powers-bill-codes-of-practice>.

## **FUTURE PASSAGE OF THE BILL**

Parliament has until the end of 2016 (when DRIPA 2014 expires) to debate the Bill and pass it into law as the Investigatory Powers Act 2016. That process will include multiple debates in both Houses of Parliament and detailed scrutiny by a Public Bill Committee, which may be expected to devote up to 20 sessions to the Bill.

The next stage in that process will be the Second Reading in the House of Commons, which will be an opportunity to gauge the reaction of the House to the main provisions of the Bill. The parliamentary passage of the Bill can be tracked here: <http://services.parliament.uk/bills/2015-16/investigatorypowers.html>.

## **MATERIALS PUBLISHED BY DAVID ANDERSON Q.C.**

“A Question of Trust”, 11 June 2015

<https://terrorismlegislationreviewer.independent.gov.uk/a-question-of-trust-report-of-the-investigatory-powers-review/> (Report and evidence)

“Putting Parliament in Charge”, 4 November 2015

<https://terrorismlegislationreviewer.independent.gov.uk/putting-parliament-in-charge/#more-2473>

“The Big Reveal”, 7 November 2015

<https://terrorismlegislationreviewer.independent.gov.uk/the-big-reveal/>

“Will Europe call the shots?”, 7 November 2015

<https://terrorismlegislationreviewer.independent.gov.uk/will-europe-call-the-shots/>

“Davis/Watson appeal”, 20 November 2015

<https://terrorismlegislationreviewer.independent.gov.uk/daviswatson-appeal/>

Oral evidence to Joint Committee on the draft Investigatory Powers Bill, 2 December 2015

<http://www.parliament.uk/documents/joint-committees/draft-investigatory-powers-bill/oral-evidence-draft-investigatory-powers-committee.pdf> (QQ 61-75)

Written evidence to the Joint Committee, 7 January 2016

<http://www.parliament.uk/documents/joint-committees/draft-investigatory-powers-bill/written-evidence-draft-investigatory-powers-committee.pdf> (pp 54-57)

“The IP Bill has landed”, 2 March 2016

<https://terrorismlegislationreviewer.independent.gov.uk/the-ip-bill-has-landed/>

**6 March 2015**

**DAVID ANDERSON Q.C.**